

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 32**  
**93RD GENERAL ASSEMBLY**

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Reported from the Committee on Local Government May 9, 2005 with recommendation that House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 32 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

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**AN ACT**

To repeal section 573.503, RSMo, and to enact in lieu thereof seven new sections relating to sexually-oriented businesses, with penalty provisions and a severability clause for certain sections.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 573.503, RSMo, is repealed and seven new sections enacted in lieu thereof, to be known as sections 67.2540, 67.2546, 67.2548, 67.2552, 67.2554, 67.2556, and 573.503, to read as follows:

**67.2540. As used in sections 67.2540 to 67.2556, the following terms mean:**

(1) "Adult cabaret", a nightclub, bar, restaurant, or similar establishment in which persons regularly appear in a state of nudity, as defined in section 573.500, RSMo, or semi-nudity in the performance of their duties;

(2) "Employee", a person who is at least twenty-one years of age and who performs any service on the premises of a sexually-oriented business on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not said person is paid a salary, wage, or other compensation by the operator of said business. The term employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

premises, or for the delivery of goods to the premises;

(3) "Licensee", a person in whose name a license to operate a sexually-oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually-oriented business;

(4) "Nudity" or a "state of nudity", the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or anal cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state;

(5) "Person", an individual, proprietorship, partnership, corporation, association, or other legal entity;

(6) "Semi-nude" or in a "semi-nude condition", a state of dress in which opaque clothing fails to cover the genitals, anus, anal cleft or cleavage, pubic area, vulva, nipple and areola of the female breast below a horizontal line across the top of the areola at its highest point. Semi-nudity shall include the entire lower portion of the female breast, but shall not include any portion of the cleavage of the human female breast exhibited by wearing apparel provided the areola is not exposed in whole or part;

(7) "Sexually-oriented business", an adult cabaret or any business which generates a majority of its revenue from the sale of sexually-oriented material;

(8) "Sexually-oriented materials", any pictorial or three dimensional material that depicts nudity, sexual conduct, sexual excitement, or sadomasochistic abuse in a way which is patently offensive to the average person applying contemporary adult community standards with respect to what is suitable for minors;

(9) "Specified criminal activity", includes the following offenses:

(a) Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution, or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling prohibited under Missouri law; or distribution of a controlled substance; or any similar offenses described in this subdivision under the criminal or penal code of other states or countries;

(b) For which:

a. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

b. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

c. Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four month period;

(c) The fact that a conviction is being appealed shall not prevent a sexually-oriented business from being considered a nuisance and closed under section 67.2546;

(10) "Specified sexual activities", includes the following acts:

(a) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;

(b) Sex acts, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or

(c) Excretory functions as part of or in connection with any of the activities set forth in this subdivision.

**67.2546. 1.** A person who operates or causes to be operated a sexually-oriented business shall be prohibited from exhibiting in a viewing room on the premises a film, video cassette, DVD, or other video reproduction that depicts specified sexual activities.

**2.** A person violating the provisions of subsection 1 of this section is guilty of a class A misdemeanor.

**67.2548. 1.** A sexually-oriented business shall not employ any person who is not yet twenty-one years of age.

**2.** A person violating the provisions of subsection 1 of this section is guilty of a class A misdemeanor.

**67.2552. 1.** It shall be a class A misdemeanor for a person to knowingly and intentionally appear in a state of nudity or depict, simulate, or perform specified sexual activities in a sexually-oriented business.

**2.** It shall be a class A misdemeanor for a person to appear knowingly or intentionally in a sexually-oriented business in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ten feet from any patron or customer and on a stage at least two feet from the floor and behind a railing no less than twenty-four inches in height.

**3.** It shall be a class A misdemeanor for an employee, while semi-nude in a sexually-oriented business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in a sexually-oriented business.

**4.** It shall be a class A misdemeanor for an employee, while semi-nude, to touch a customer or the clothing of a customer.

**5.** It shall be a class A misdemeanor if a person knowingly allows on the premises of a sexually-oriented business a person under the age of twenty-one years, except for a person exclusively on the premises for repair or maintenance of the premises or equipment on the

premises, or for the delivery of goods to the premises.

**6. No sexually-oriented business may remain open at any time between the hours of midnight and ten a.m. on weekdays and Saturdays. Such businesses shall be closed on all official state or federal holidays and Sundays.**

**67.2554. 1. Any county, city, town, or village may create an ordinance requiring sexually-oriented businesses to be licensed and may collect a non-refundable deposit fee to be paid prior to the processing of the licensing application. The application for such a license shall require the applicant to provide the following information:**

- (1) The applicant's name;**
- (2) The applicant's age, date of birth, and place of birth;**
- (3) The address and telephone number of the applicant's present residence;**
- (4) The address and telephone number of the applicant's present business;**
- (5) The number on the applicant's driver's license or other state-issued identification card;**
- (6) The date on which the applicant's driver's license or other state-issued identification card was issued;**
- (7) The state that issued the applicant's driver's license or other state-issued identification card;**
- (8) Written proof that the individual is at least twenty-one years of age.**

**2. A license shall not be issued to any person who has had a conviction of a felony or misdemeanor relating to sexual offenses under chapter 566, RSMo, or obscenity offenses under chapter 573, RSMo, in the past ten years.**

**67.2556. 1. For the purpose of promoting health, safety, morals or the general welfare of the community, the legislative body of all counties, cities, towns, and villages is hereby empowered to regulate and restrict the location of sexually-oriented businesses in accordance with the general zoning powers granted to cities, towns, and villages under section 89.020, RSMo, counties with a charter form of government under section 64.090, RSMo, counties of the first classification under section 64.255, RSMo, counties of the second and third classification under section 64.620, RSMo, and all counties except those with a charter form of government under section 64.850, RSMo.**

**2. The provisions of sections 67.2540 to 67.2556 are designed to protect the following public policy interests of this state, including but not limited to: to mitigate the adverse secondary effects of sexually-oriented businesses, to limit harm to minors, and to reduce prostitution, crime, juvenile delinquency, deterioration in property values, and lethargy in neighborhood improvement efforts.**

**573.503. Notwithstanding any provision of law to the contrary, any city not within a county and any county may, by order or ordinance, require a background check be conducted on all employees of any adult cabaret or sexually-oriented business as defined in section 67.2540,**

**RSMo**, to ascertain whether any such employees have been convicted of or have pled guilty to any misdemeanor or felony involving prostitution or aiding or abetting prostitution, drug possession or trafficking, money laundering, tax evasion, or illegal gambling activity.

Section B. If any provision of sections 67.2540 to 67.2556 or the application thereof to anyone or to any circumstances is held invalid, the remainder of those sections and the application of such provisions to others or other circumstances shall not be affected thereby.

Unofficial

Bill

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